QUASI-LEGISLATIVE POWERS OF STATE BOARDS OF HEALTH[1]

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The aim of the present paper is to describe the regulative powers granted to state boards of health, and to consider the wisdom of these grants as well as their validity as tested by the principle that the law-making powers granted to legislatures may not constitutionally be delegated by them to other agents of government.

State boards of health, while primarily administrative bodies, have generally a more or less extensive power to make regulations in supplement to and having the force of statute law. Questions thus arise as to the extent and validity of the ordinance-making powers granted. Does the power to make these regulations, having the force of law, change the nature of these boards? Under what conditions may they exercise their power?

THE NATURE OF THE POWER

In State vs. Burdge, a Wisconsin case, the court held that "The state board of health had no legislative power, properly so called, and none could be delegated to it. It is purely an administrative body. . . . . It cannot be doubted but that under appropriate general provisions of law in relation to the prevention and suppression of dangerous and contagious disease, authority may be conferred by the legislature upon the state board of health or local boards to make reasonable rules and regulations for carrying into effect such general provisions which will be valid, and may be enforced accordingly. The making of such rules is an administrative function, and not a legislative power,

[1] In substance a chapter of a thesis on "State Administration of Health."

but there must first be some substantive provision of the law to be administered and carried into effect. The true test and distinction whether it is administrative, and merely relates to the execution of the statute law lies between the delegation of the power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised in pursuance to the law. The first cannot be done. The latter can."[2] The supreme court of Indiana denied that the legislature can relieve itself of its responsibility in legislation. "It cannot confer on any body or person the power to determine what the law shall be, as that power is one which only the legislature, under our constitution, is authorized to exercise; but this constitutional inhibition cannot properly be extended so as to prevent the grant of legislative authority, to some administrative board or other tribunal, to adopt rules, by-laws, or ordinances for the government of, or to carry out a particular purpose. It can not be said that every grant of power to executive or administrative boards or officials, involving the exercise of discretion and judgment, must be considered a delegation of legislative authority. Laws must be complete but methods and details may be delegated to some designated body or officer. In order to secure and promote the public health, the State creates boards of health as an instrumentality or agency for that purpose, and invests them with the power to adopt ordinances, by-laws, rules, and regulations necessary to secure the objects of their organization. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the legislature, in view of the great public interests confided to them, have always received from the courts, a liberal construction, and the right of the legislature to confer upon them the power to make reasonable rules, by-laws, and regulations, is generally recognized by authorities."[3] The extreme view is expressed by the Vermont court. "Police powers may be lawfully delegated to municipal corporations, and

[2] State vs. Burdge, 95 Wis. 390.

[3] Blue vs. Beach, 155 Ind. In accord with this case, Isenhour vs. State, 157 Ind. 517.

to local or state boards of health, and, when so delegated the agency employed is clothed with power to act as fully and efficiently as the legislature itself."[4] It seems perfectly clear then that the boards of health are purely administrative bodies, and yet may under certain circumstances exercise the power to make regulations having the force of law.

THE EXTENT TO WHICH THE POWER HAS BEEN GRANTED

The power to make regulations having the force of law has been granted in various degrees; in some cases covering everything applying to health; in others, certain specified particulars; in some cases in very general terms, and in some, in terms intended to be so exclusive and inclusive as to be free from interference from the courts. A few quotations from the statutes of various States will illustrate. The law of Indiana says the state board of health shall have power "to pass rules governing the duties of all health boards and all health officers, governing the collection of vital statistics, governing the hygienic disposal and transportation of the dead, governing the specific features of quarantine and for the enforcement of the state health and registration laws."[5] The board has issued very elaborate and concrete regulations under authority of this section.

In Illinois "The board shall have authority to make such rules and regulations and such sanitary investigations as they may from time to time deem necessary for the preservation and improvement of the public health, and they are empowered to regulate the transportation of the remains of deceased persons."[6] The attorney general has interpreted the above to mean that the state board has the power and is duty bound "to make any and all rules and regulations which they deem necessary to preserve the public health," and that the whole power of the State would be used to enforce them.[7]

[4] Starte vs. Morse, 80 Atl. Ren. 189.

[5] Acts, 1909, ch. 144, sec. 6.

[6] Rev. Statutes 1907, ch. 126, sec. 2.

[7] *Public Health Laws and Sanitary Memoranda.* Issued by the State Board of Health, 1907, p. 6.

Pennsylvania makes it the "duty of the advisory board to advise the commissioner on such matters as he may bring before it, and to draw up reasonable orders and regulations as are deemed necessary for the prevention of disease and for the protection of the lives and health of the people of the State, and for the proper performance of the work of the department of health."[8] Various specific grants of power to make regulations are mentioned in the laws pertaining to the different departments of work.

Wisconsin provides that the board "may make, alter, modify or revoke rules and regulations for guarding against the introduction of any such diseases into the State [previously specified in the law] for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such disease, for the transportation of dead bodies, for the speedy and private interment of the bodies of persons who have died from contagious disease, for the proper observance of provisions" of the law relating to specified public buildings and premises, etc. "The board may declare any or all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole or any specified part of the State and make them applicable to any vessel, railway car or public vehicle of any kind."[9]

Some States give the board very limited power to make regulations. In New York the board has power to make rules governing the collection of vital statistics, transportation of dead bodies, determining which diseases are communicable, and "may" make rules for the protection of water supplies; in Massachusetts, "the sanitation of police station houses, lockups, and houses of detention and the use of the public drinking cup and roller towels" and governing public water supplies; in Alabama, "the sanitation of railroad depots and passenger cars;" in Arkansas, "only the transaction of business," while the Connecticut laws give no regulation making power.[10]

[8] Sec. 5, Act Apr. 27, 1905, Public Laws, 313.
[9] Sec 1408, Wis. Statutes, 1898.
[10] *Statutes and Public Health Bulletin*, no. 54, p. 43.

In twenty-four States the board of health is given power to add to the list of diseases to be reported which are specified in the law.[11] Specific power is granted to enact rules to prevent the introduction and spread of communicable diseases in thirty-five States.[12] Some States, as Oregon and Utah, grant a similar power for the "preservation of public health," or as Illinois and Iowa, the "preservation and improvement" of the public health, or as in Pennsylvania the protection of "health and life." In several of the above States power is given to make special regulations in cases of emergency. Power to make rules governing the transportation of dead bodies is specified in the laws of twenty-three States.[13] Seventeen States give power to make rules governing quarantine.[14]

The power to make regulations governing water supplies varies greatly in the different States. The Massachusetts board may make rules and regulations to prevent the pollution and to secure the sanitary protection of all such waters as are used as sources of water supply.[15] The Minnesota laws give the board authority to make rules to prevent "pollution of streams and other waters and the distribution of waters by private persons for drinking or domestic use."[16] The Montana board may make regulations to prevent pollution and secure sanitary protection of

[11] Arizona, Colorado, California, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Virginia, Washington and Wisconsin.

[12] Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

[13] Alabama, Arizona, Arkansas, California, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Vermont, Washington and Wisconsin.

[14] Florida, Georgia, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, South Carolina, Texas, Utah, Virginia, Wyoming.

[15] Sec. 113, ch. 75, Rev. Laws. The Connecticut and Merrimac rivers excepted.

[16] Sec. 21, 31 Rev. Laws, 1905.

water for public use.[17] The New York state health commissioner may make rules and regulations for the protection of all water supplies except those waters and sources affecting the supply of New York City. For these the commissioners of water supply, gas and electricity of New York City make rules with the approval of the state commissioner.[18] The board of North Carolina has power to make "such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard public health."[19]

Vermont gives its board power to make regulations to prevent pollution of waters for domestic use.[20] In other States where the boards have power to grant or refuse permits for waterworks and sewerage plants, and to investigate such concerns and to issue orders affecting them, they, in fact, enjoy a wide power of making regulations. Pennsylvania and Ohio are examples. The boards of several States have power to issue regulations governing water supply, drainage and sewerage of cities, towns and villages. This is true in Florida,[21] Virginia,[22] West Virginia,[23] and Wyoming.[24]

In Louisiana, Minnesota and Iowa practically the whole health administration rests on regulations made by the board. The same was true in Texas and California but the codes also drafted by the boards were subsequently enacted into laws. Power to make regulations for the government of the board and to carry out its functions, is granted in nineteen States.[25]

Idaho, Kentucky, Maine, Michigan, Montana, Oregon and Tennessee provide that the regulations are "subject to the pro-

[17] Rev. Laws, 1911, sec. 1560.

[18] Cons. Code, 1909, sec. 71, as amended by ch. 695, Laws 1911.

[19] Sec. 24, *Health Code, 1912 Bulletin*, March, 1912, p. 14

[20] Sec. 5497, Rev. Statutes.

[21] Laws, 1909, ch. 593, no. 12, sec. 1.

[22] Laws, 1910, ch. 179, sec. 1.

[23] Rev. Statutes, 1910, sec. 4382.

[24] Laws, 1906, ch. 150, sec. 4382.

[25] Arizona, Arkansas, California, Colorado, Georgia, Indiana, Kansas, Nebraska, New Mexico, North Dakota, Massachusetts, Mississippi, Missouri, South Dakota, Virginia, Wisconsin, Wyoming, and West Virginia.

vision of the health acts," and Georgia, Minnesota, Missouri, Nebraska, New Mexico, Utah, Virginia and West Virginia, that they must not be contrary to existing laws. In Rhode Island the regulations must be approved by the governor; in Maine, by the governor and council; and in Minnesota, by the attorney general.[26]

ATTITUDE OF THE COURTS TOWARDS THE EXERCISE OF THIS POWER

1. Making Regulations Determining which Disease must be Reported

The law of Iowa conferred upon the state board of health the power to draw up a health code and provided that any one who knowingly fails, neglects, or refuses to comply with and obey any order, rule or regulation of the state board of health is guilty of a misdemeanor. The board placed scarlet fever on the list of reportable diseases. The law was attacked on the ground that it did not define the crime for which it provided punishment. The court said: "We think it clear that the legislature may provide for the punishment of acts in resistance to, or violation of, the authority conferred upon such subordinate tribunal or board. When these boards duly adopt rules or by-laws by virtue of legislative authority, such rules and by-laws, within the respective jurisdiction have the force and effect of a law of the legislature; and like an ordinance or by-law of a municipal corporation they may be said to be in force by the authority of the State." A certified copy of a publication of the regulations containing the rule in question is sufficient evidence to show the existence of the rule and knowledge of it.[27]

2. Making Regulations to Prevent the Introduction and Spread of Contagious Diseases

Under the law giving it power "to make such rules and regulations, and to take such measures as may in its judgment be

[26] *Statutes and Public Health Bulletin*, no. 54.

[27] Pierce vs. Doolittle, 130 La. 333.

necessary for the protection of the people of the State from Asiatic cholera, or other dangerous and contagious diseases," and other general powers, the state board of health of Wisconsin passed a resolution requiring all children to be vaccinated as a prerequisite to attend school, and ordered the regulation to be enforced at Beloit.[28] There was no epidemic at Beloit and but a single case of small-pox which was properly quarantined. The court held the regulation invalid. "There is no statute which requires vaccination as one of the conditions of the right or privilege of attending the public schools; and in the absence of any such statute, we think it cannot be maintained that the rule relied on is a valid exercise of the power of the state board of health. The state board is the creation of the statute. It has only such powers as the statute covers. It has no common law powers. . . . . The powers of the state board of health, though quite general in terms, must be held to be limited to the enforcement of some statute relating to some particular condition or emergency in respect to the public health; and although they are to be fairly liberally construed, yet the statute does not, either expressly or by fair implication authorize the board to enact a rule or regulation which would have the force of a law changing the statute in relation to the admission and right of pupils of a proper school age to attend the public schools." The court grants that reasonable regulations having the force of a law could be made to carry into effect the general provisions of a statute, but such a regulation as this could be made only by authority of a statute. Furthermore, the regulation was held unreasonable for there was no epidemic calling for such drastic rule. All regulations must bear the test of reasonableness.[29]

The Indiana board under a similar general power enacted a regulation providing that when an epidemic of small-pox was impending a local board of health could make a rule requiring vaccination as a prerequisite of school attendance. In passing on the validity of this regulation, the court said: "It is true that

[28] The regulation was general in terms, but apparently the board expected it to be enforced only when local authorities were ordered to put it into effect.

[29] State vs. Burdge, 95 Wis. 390.

such rules and by-laws must be reasonable and boards of health cannot enlarge or vary, by the operation of such rules, the powers conferred upon them by the legislature, or any rules or by-law which is in conflict with the State's organic law, or antagonistic to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards would be invalid. . . . . There is no express statute in this State making vaccination compulsory, nor imposing it as a condition upon the privilege of children attending schools, and in the absence of such a law, the exclusion must be justified by an emergency."[30] The Illinois supreme court held on the same conditions that "the powers of the board are limited to the proper enforcement of statutes, or provisions thereof, having reference to emergencies requiring action on the part of the agencies of the government to preserve the public health and to prevent the spread of contagious disease."[31] The state legislature may make vaccination a condition of attending school,[32] or if the statute expressly confers the power to make such regulation it is valid though no epidemic is impending.[33] The same power is upheld when exercised under a municipal ordinance when an epidemic is impending.[34] A local board may make a regulation requiring every one to be vaccinated when acting under authority of a statute.[35]

Under the power to adopt regulations to prevent the spread of contagious and infectious diseases, the state board of Kentucky provided that all dairy cattle must submit to a tuberculin test to

[30] Blue vs. Beach, 155 Ind. 121.

[31] Potts vs. Breen, 167 Ill. 67. Reaffirmed in Lawbough vs. Board of Education, 177 Ill. 572.

[32] Abell vs. Clark, 84 Cal. 226. In re Walters 33 N. Y. Supplement, 322.

[33] Bissel vs. Davidson, 65 Conn. 183.

[34] Duffield vs. Williamsport School District 162 Pa. State 476.

[35] Jacobson vs. Mass., 197 U. S. 11.

Though it was not necessary to the decision of the case, the Supreme Court of Wisconsin held in State vs. Burdge, 95 Wis. 390 (cited above) that the board of health could not make a regulation requiring vaccination as a condition of school attendance even though acting under a statute giving it authority to do so unless an epidemic existed. This decision is contrary to the general opinion. The subject is fully discussed and citations given in American State Reports, Vol. 80, p. 230, in connection with Blue vs. Beach, 155 Ind. 121, and in 29 L. R. A. 251 in connection with Bissel vs. Davidson, 65 Conn. 183.

be made by the veterinary surgeon of the board or his assistants, and where cattle responded, the owner must destroy them or the veterinary would do so at the owner's expense. In passing upon the validity of the regulation the court saw in it simply a completion of legislative enactment. "Regulations that are not unreasonable and oppressive, and that are calculated to bring the disease under effective control and stop its spreading, are not statutes. They are not something in addition to, but are details within the statute passed by the state legislature. They must be germane to the statute, and in their execution have reference solely to the object aimed at by the statute." Certain limitations upon the action of health boards exist. (1) "The existence of the disease in the community must be a fact, and not a mere suspicion. (2) The regulation adopted for testing its presence in the particular animal or herd, must be such as is accepted by science as one reasonably calculated to discover it. (3) If isolation or destruction is adopted as a remedy, it must have been accepted by the medical profession that the treatment is one well calculated to eradicate the disease and stop its spreading. If the boards proceed otherwise, they do so at their peril."[36]

3. Rules Governing the Transportation of Dead Bodies

Under the general power to make rules "to prevent outbreaks and spread of contagious diseases" the Indiana state board provided that "Every dead body must be accompanied by a person in charge, who must be provided with a ticket marked, and also present a full first class ticket marked 'corpse' and a transmit permit from a board of health or proper health authority giving permission for the removal, and showing name of deceased, age, place of death, cause of death (and if a contagious or infectious disease), the point to which shipped, a medical attendant, and name of the undertaker." In this case the transmit permit did not contain the name of the medical attendant, so the railroad company refused to accept the body. The court sustained the

[36] Kentucky Board of Health Report, 1908–1909, p. 72

railroad company and the regulation of the state board of health. The regulation was reasonable in character and such as to protect the public health.[37] Since this time the board of health of Indiana has been granted specific power to regulate the transportation of dead bodies. This case seems to indicate that a state board may make such specific regulations where it is given general power to make rules to protect public health against contagious diseases.

4. Quarantine Regulations

Under authority of a law giving it power to make general rules for the detention and inspection of all travelers and their property when known to have been exposed to certain contagious diseases or to have come from a locality where such diseases exist, the Michigan state board made a ruling that "all baggage of all immigrants, and all containers of such baggage, destined to pass through Michigan must be detained until disinfection" unless it has a certificate from an inspector of the Michigan board of health. In reviewing the case the court said: "The rule in question did not make it a prerequisite of inspection that the baggage come from a locality where such disease existed, as ascertained either by the board or inspector, and in this respect was broader than the statute, and can not be sustained."[38] In other words, had the board limited its ruling to those goods coming from places known to be infected, the courts would have sustained it.

A similar case arose in Mississippi when the board by a ruling prohibited any person from getting off trains or boats at any point within the State because some cases of yellow fever existed along the coast and cases were suspected to exist at various other places in the State. The court held the regulation void because unreasonable. There was no epidemic calling for so drastic a rule.[39] A Louisiana case illustrates the possible extent of quar-

[37] The Lake Erie and Western R. R. Co. vs. James, 10 Ind. 550.

[38] Hurst vs. Warner, 102 Mich. 490.

[39] Wilson vs. R. R. Co., 77 Miss. 714. Same holding in Koscuisko vs. Solomon Slowberg, 68 Miss. 469.

antine regulations. The state board of health had provided for inspection of ships before landing. At the time of an epidemic in New Orleans the board passed a resolution preventing any ship from landing in New Orleans or other places within practically one hundred miles thereabouts. A ship with a clean bill of health protested. The court refused to interfere, and held that "It is the right and duty of the different States to protect and preserve the public health" even though it interferes incidentally with interstate commerce.[40] The emergency called for drastic action.

5. Regulations Affecting Water Supplies

In this field the regulations are most often limited in their application to a particular stream, pond, or city. From the nature of the problem they could not be practical and be state wide. The law under which the board acts is general in terms and expresses the policy of the State. The regulation of the boards of health apply the general principles laid down by the law.

The state board of Massachusetts made regulations protecting the waters used by the metropolitan water and sewerage board. It was contended that they were in "conflict with the plaintiff's right of property." But the court held that "as a riparian proprietor without other rights, the rules and regulations are binding upon him, and if he has a prescriptive right to pollute water they are still binding and must be enforced."[41] A regulation of the Vermont board prevented bathing in a certain pond which had been used as the source of water supplies for over twenty years. The riparian owners claimed it was a violation of personal liberty. The court held the delegation of power proper, and added that the measure must in a reasonable degree tend to accomplish the result sought but refused to consider the wisdom or expediency of the regulation. "Every reasonable presumption

[40] Compagnie Francaise De Navigation vs. State Board of Health, 25 So. Rep. 591.

[41] Sprague vs. Dorr, 185 Mass. 10.

and intendment is indulged with reference to each element essential to their constitutionality."[42]

The metropolitan water and sewerage board of Massachusetts acting under the legislative grant of exclusive right to regulate ponds and reservoirs used as a source of water supply and to keep persons from going on such waters, passed a rule making it necessary to secure a license to boat on a pond used for water supply. In contesting, the defendant attempted to show that the regulation was unnecessary. The court refused to consider that question and held that the power to regulate included the power to permit people to go on to the water subject to reasonable regulations. "The legislature determined, as it has a right to determine, whether it should exercise the power to exclude the public from the waters."[43] But if a state board is given the power to regulate the use of waters to prevent pollution, it can not make the securing of a license from some other board a requisite for going on to the ponds to cut ice. A board cannot delegate its powers.

The situation is the same when a regulation affects a municipality. The state board of Vermont ordered the village of St. Johnsbury to cease using a certain water supply for domestic purposes, but allowed the village to use the water for other purposes. The court held that the State had retained the full right of "governing and regulating the internal police of the State" and this embraces "such reasonable rules and regulations established directly by legislative enactment as will protect the public health and safety, and the State may invest local and state boards, created for administrative purposes, with authority in some proper way to safeguard the public health and safety, the method of accomplishing the results being within the discretion of the State, provided the powers of the general government are not infringed nor any constitutional provisions of the State or of the United States." The court refused to inquire into the wisdom of the legislative plan of carrying out its ends.

[42] State vs. Morse, 80 Atl. Rep. 189.
[43] Sprague vs. Minon, 195 Mass. 581.
[44] Commonwealth vs. Staples, 191 Mass. 384.

It matters not though the regulations cause inconvenience, provided the means have a just relation to the protection of health.[45] A state board may legally be given the power to prevent the dumping of sewage into a stream, or to demand the sewage be purified "in a manner satisfactory" to itself before it can be discharged into a stream.[46]

The right of notice and hearing was demanded by one affected by regulations of the Massachusetts board to protect waters. The court, however, regarded the general rules and regulations to be quasi-legislative, and publication as required by the law as sufficient notice.[47]

6. Status of an Entire Code Issued by a Board

The general assembly of Louisiana created a board of health giving it general supervision over quarantine, and the control of contagious and infectious diseases in the State. The board was authorized to issue a "Sanitary Code for the State of Louisiana" which should contain rules and regulations for the improvement of the sanitary and hygienic conditions of the State. The law indicated general fields, and limitations provided that after adoption the code should be printed and distributed to health authorities and the public generally. A violation of the code was made a misdemeanor and the punishment fixed in the law.[48] The law was challenged on the ground that the legislature could not delegate to the state board of health the power to define what shall constitute a crime, nor delegate legislative power for State purposes, in general, to any subordinate body. The court held that the constitutional provision empowering the legislature to establish a board of health and define its powers made the law valid. "Prescribing its powers" can only mean to delegate to the board of health such powers as may be

[45] State Board of Health vs. Village of St. Johnsburg, 73 Atl. Rep. 58.

[46] Miles City vs. State Board of Health, 39 Mont. 405. State Board of Health vs. City of Greenville, 98 N. E. Rep. 1019.

[47] Nelson vs. State Board of Health, 186 Mass. 330.

[48] Act 192 of 1898; amended by Act 44 of 1900, Act 150 of 1902 and Act 184 of 1904.

deemed necessary for efficiently carrying out the purposes for which a board of health is created, and power most obviously necessary in such a case is that to make health regulations that shall have the force of law." The regulations need not be promulgated as statutes by publication in the official journal. Mere publication is sufficient.[49]

TENDENCIES

The facts do not justify positive conclusions. Practice varies greatly as the following statements indicate. In a number of States where boards have been organized and reorganized within the last decade, the law has gone into considerable detail, leaving few important matters to be governed by board regulations. Minor details are quite generally left to the control of the boards. In Texas and California previous codes of the boards have recently been enacted into law. In Minnesota the opposite has taken place and the laws were repealed with a view to giving to the board the power to make regulations covering health work.[50] In a number of cases, the state officers are supplementing the laws with extensive regulations. Among these are Indiana and Iowa.

ADVANTAGES AND DISADVANTAGES

It would seem impossible, or if possible, impracticable to specify in detail in the law the work and operation of health authorities. In many departments of government there is a tendency to delegate quasi-legislative power to expert administrative boards. No legislature is able to understand the minute details of the work of every department, or to make general regulations which will apply to every specific case, or to anticipate emergencies which are inevitable. And so it would seem sound to suggest that legislation could well be general, outlining the field in a broad way, leaving the details to experts. There seems little danger in this with the courts holding the check. If it were possible to include all the details in the statutes, it would

[49] State vs. Snyder, 59 So. Rep. 44, La. Superior Court, 1912.

[50] *Public Health Bulletin*, no. 54, p. 44.

be unwise to do so. It is a very much more difficult matter to amend the law when conditions change than for the health officers to amend the code. New discoveries, and new scientific methods often make such changes necessary to efficient sanitary work. At the same time it is a well known fact that the average legislature is far from being abreast of the times in such matters, and is quite generally willing to postpone action. From every point of view it seems advisable to confer considerable power to make regulations to the boards.

CONCLUSIONS

On the basis of the action of the courts certain principles may be formulated which must be observed by the boards in the exercise of their quasi-legislative function.

1. Regulations must not be contrary to the laws or constitution.

2. Boards can issue regulations only when power is specifically granted by law or is necessarily implied from powers granted. Courts have been liberal in this regard, allowing regulations for transportation of dead bodies, and those requiring tuberculin test for cattle, under the general power to make regulations to protect from contagious diseases.

3. Courts are more liberal in interpreting powers exercised during emergencies than under ordinary circumstances.

4. Regulations in all cases must be reasonable. The question of reasonableness is a judicial one.

5. Regulations must bear a relation to the end in view. However moderate a regulation may be, if it does not bear a direct relation to health, it is invalid.

6. Personal and property rights must give way to general good, and may be affected by regulations if made under authorization of law.

7. A board cannot prescribe a punishment in a regulation. Penalties can be fixed by law only.

8. Publication of regulations is sufficient notice to those affected. If a method of publication is prescribed by law it must be followed. The formalities of publication of statutes is not necessarily required in case of health regulations.